

**REMARKS**

Applicants request examination of the subject application in view of the following remarks.

In an Office Action Restriction Requirement dated July 11, 2007 ("Restriction Requirement"), claims 6-62 were restricted among various Groups and species.

Claims 6-62, drawn to methods and formulations for the treatment, repair or prevention of, or the modulation of inflammation associated with damage to connective tissue, are pending in the application, with claims 6, 7, 29, 33, 43, and 53 being independent.

***Election/Restrictions*****Election of Group**

In an Office Action Restriction Requirement dated July 11, 2007 ("Restriction Requirement"), claims 6-62 were restricted among the following two Groups of claims:

Group I: Claims 6-30, 33-41, 43-51, 53-61 drawn to a composition comprising avocado/soybean unsaponifiable and aminosugar, glycosaminoglycan, or related compounds, classified in class 514, subclass 55, 62, 457.

Group II: Claims 31-32, 42, 52, and 62, drawn to a method of treatment, repair or prevention of, or the modulation of inflammation associated with damage to connective tissue, classified in class 514, subclass 55, 62, 457.

Applicants hereby provisionally elect for examination, with traverse, **Group I, claims 6-30, 33-41, 43-51, 53-61**, drawn to a composition comprising avocado/soybean unsaponifiable and aminosugar, glycosaminoglycan, or related compounds. Applicants traverse this restriction requirement for the reasons set forth below.

First, the Examiner asserts that the restriction between the product claims of Group I and the process claims of Group II are proper because "the process for using the product as

claimed can be practiced with another materially different product, such as glucosamine alone, or with other known anti-inflammatory agents.” Restriction Requirement, page 2, citing MPEP §806.05(h). Applicants respectfully disagree.

Applicants note that the claims of Group II depend from various claims of Group I, and therefore incorporate the features of those claims by reference. For example, claim 31 (Group II) recites a method comprising the step of administering the formulation of any one of claims 6, 7, or 29 (all of Group I) to a human or animal. Accordingly, each method of Group II, *as claimed*, requires the use of a formulation of Group I. Because the claims of Group II incorporate by reference the formulations of Group I, the methods of Group II simply cannot employ a formulation different from the formulations of Group I. Accordingly, Applicants respectfully submit, the Examiner is not correct in asserting that the processes for using the product as claimed in claims 31-32, 42, 52, and 62 can be practiced with another materially different product.

Applicants further submit that it would not be a serious burden on the Examiner to examine both Groups of claims. First, as the Examiner indicated in the Restriction Requirement, both Groups are classified in the same class and subclass, which minimizes the burden of common examination. Second, had Applicants provisionally elected the claims of Group II instead of the claims of Group I, as permitted by the Restriction Requirement, the Examiner would have had to consider all of the claim recitations of those parent claims from Group I in addition to the recitations of the claims of Group II. In effect, examination of the claims of Group II necessarily requires the examination of their parent claims of Group I. Given the common class and subclass of all of the claims, it would not be a substantial burden on the Examiner to include in the examination the claims of Group I that are not parent claims of the claims of Group II. Accordingly, Applicants believe that a search and examination of both Groups could be made without substantial burden and that restriction is therefore unwarranted. *See* MPEP §803.

### **Election of Species**

The Examiner has required an election of one species from the following three species:

- (A) unsaponifiable;
- (B) aminosugars, such as those listed in claim 12; and
- (C) glycosaminoglycan, and/or any other active ingredient.

In response to this requirement, Applicants provisionally elect Species A **“unsaponifiable”** corresponding to all of claims **6-30, 33-41, 43-51, 53-61**. Applicants traverse this restriction requirement for the reasons set forth below.

Applicants submit that it is not proper to restrict Species A (unsaponifiable) from Species B (aminosugars) and Species C (glycosaminoglycan, and/or any other active ingredient). All of the pending claims require the presence of both “one or more avocado/soybean unsaponifiables,” the ingredient of Species A, and at least one of an aminosugar (Species B) and a glycosaminoglycan component or other active ingredient (Species C). For instance, claim 6 recites “one or more avocado/soybean unsaponifiables together with an aminosugar or a glycosaminoglycan component.” Thus, the examination of any claim requires the consideration of avocado/soybean unsaponifiables (Species A) and at least one of an aminosugar (Species B) and a glycosaminoglycan component or other active ingredient (Species C).

For this reason, all of the Species B claims require the ingredient of Species A, and all of the Species C claims also require the ingredient of Species A. If Applicants had elected Species B, examination of the Species B claims would require consideration of Species A. Similarly, if Applicants had selected Species C, examination of the Species C claims would require consideration of Species A. Species B and Species C simply cannot be examined in isolation without also considering Species A. Accordingly, the examination of any claim requires consideration of at least two Species. Accordingly, it is improper to require the election of only one Species for prosecution.

Further, Applicants submit that it would not impose substantial burden on the Examiner to examine at least two Species, such as Species A and B, Species A and C, or Species

A, B, and C. Because each claim requires the ingredients of Species A and at least one ingredient of Species B and Species C, proper examination of any claim will in any event require the consideration of at least two Species, and proper examination of the collection of "two-species" claims will require consideration of all three Species.

For at least these reasons, Applicants respectfully submit that the Examiner's restriction among Species A, B, and C is improper and should be withdrawn.

It is not believed that extensions of time or fees for net addition of claims are required beyond those that may otherwise be provided for in documents accompanying this paper. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor (including fees for net addition of claims) are hereby authorized to be charged to Deposit Account No. 50-0740.

Favorable consideration of this application is respectfully requested.

Dated: August 10, 2007

Respectfully submitted,

By 

Paul J. Berman

Registration No.: 36,744

Thomas D. Bradshaw

Registration No.: 51,492

COVINGTON & BURLING

1201 Pennsylvania Avenue, N.W.

Washington, DC 20004-2401

(202) 662-6000

Attorneys for Applicant